



and carrying heavy packages and prolonged walking and standing. She noted that she first became aware of her conditions and their relation to her federal employment on December 1, 2017. Appellant explained that she uses a walker and that she has sharp pain radiating into her legs and numbness in her right foot. She stopped work on December 1, 2017.

In a statement dated February 14, 2020, appellant indicated that she had worked for the employing establishment for nine years, and that her work duties included transporting trays of mail, sweeping mail from machines into trays, and pulling automated postal centers. She explained that these tasks required her to constantly bend and pull, which caused pain in her back. In addition, appellant indicated that she delivered packages weighing up to 150 pounds, which she sometimes had to carry up three flights of stairs, and bundled advertising pages which weighed from 50 to 100 pounds, which she had to hold while distributing them into individual mailboxes. These activities also put stress on her back. Appellant further asserted that she and her medical providers had previously attempted to include her lumbar conditions with a prior claim under OWCP File No. xxxxxx196.<sup>2</sup>

In a February 25, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit additional evidence and to respond to its inquiries.

OWCP thereafter received an electromyogram and nerve conduction velocity (EMG/NCV) study dated August 16, 2018 by Dr. Robert Helsten, a physical medicine and rehabilitation specialist, which demonstrated abnormal spontaneous potentials at rest in the right peroneus longus muscle.

In a February 14, 2020 report, Dr. Brian Rogers, an osteopath specializing in occupational medicine, noted that appellant related a history of lower back and leg pain which she attributed to repetitively bending, picking up trays of mail and heavy advertisement bundles, and carrying heavy packages while at work for the past several years. On physical examination he noted tenderness to palpation at L1-3, reduced reflexes in the right patella, reduced strength in the right lower extremity, and decreased sensation to light touch on the right outer calf. Dr. Rogers further noted that appellant was not able to heel toe walk, and that she had a positive straight leg raise on the left. He diagnosed a sprain of the ligaments of the lumbar spine, lumbar intervertebral disc displacement, and lumbar radiculopathy. Dr. Rogers recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the lumbar spine.

An MRI scan of the lumbar spine dated February 25, 2020 documented a left central and paracentral disc protrusion/herniation with mild thecal sac stenosis at L1-2; a right posterolateral disc bulge at L4-5; and a disc protrusion/herniation with very mild bilateral neural foraminal narrowing at L5-S1. In a follow-up report dated March 4, 2020, Dr. Rogers noted ongoing

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<sup>2</sup> The record reflects that appellant has a previously accepted November 8, 2017 traumatic injury under OWCP File No. xxxxxx916 for a right rotator cuff tear, cervical radiculopathy, and sprains of the ligaments of the cervical and thoracic spines.

complaints in the lower back and legs. He performed an examination and reviewed the MRI scan results.

In a March 10, 2020 narrative report, Dr. Rogers reiterated appellant's complaints of low back pain which radiated into her legs and caused her difficulty walking for long periods of time. He summarized his prior examination findings and reviewed the August 16, 2018 EMG and February 25, 2020 MRI scan results and also referenced a lumbar MRI scan conducted on July 12, 2018. Dr. Rogers noted a date of injury of December 1, 2017 and diagnosed intervertebral disc disorder with radiculopathy and lumbar sprain sequelae. He opined that appellant's employment duties, including picking up trays of mail, putting out bundled advertising pages weighing between 50 to 100 pounds, delivering packages weighing up to 150 pounds which she sometimes carried up flights of stairs, and standing and holding heavy bundles of advertisements while distributing them to individual boxes, caused her lumbar injuries. Dr. Rogers explained that these duties caused excessive torquing and repetitive trauma to her low back which exceeded the amount of lifting her lumbar discs, tissue fascia, and ligaments could tolerate.

By decision dated March 26, 2020, OWCP denied appellant's claim, finding that she had not submitted sufficient evidence to establish employment factors alleged to have caused or contributed to the presence or occurrence of a disease or condition. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On July 1, 2020 appellant requested reconsideration. In support of her request, she submitted a statement dated April 23, 2020 noting that when she initially received treatment for her November 8, 2017 neck and right shoulder conditions, she also complained to her providers of low back pain.

OWCP thereafter received an April 10, 2020 statement from appellant, reiterating that her employment duties included bending, pulling, and picking up bundles, carrying heavy packages up flights of stairs, and holding heavy advertising bundles. Appellant noted that these duties caused stress to her lower back.

By decision dated August 26, 2020, OWCP modified its March 26, 2020 decision, finding that the evidence established medical diagnoses of lumbar intervertebral disc disorder and lumbar sprain in connection with her accepted factors of federal employment. However, the claim remained denied as the evidence of record was insufficient to establish a causal relationship between her diagnosed lumbar conditions and the accepted factors of her federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

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<sup>3</sup> *Supra* note 1.

limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> The opinion of the physician must be based upon a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>9</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

In his March 10, 2020 report, Dr. Rogers discussed appellant's medical history, reviewed diagnostic reports, and provided findings on physical examination of her lumbar spine and lower extremities. He discussed the mechanism of injury for this occupational disease claim.<sup>10</sup> Dr. Rogers explained that loading, torque, and local stresses arising from appellant's repetitive motion activities such as putting out bundled advertising pages weighing between 50 to 100 pounds, carrying packages weighing as much as 150 pounds up flights of stairs, and standing and holding heavy bundles of advertisements while distributing them to individual boxes exceeded the amount of lifting her lumbar discs, tissue fascia, and ligaments could tolerate. He opined that this

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<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

<sup>8</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>10</sup> *See S.B.*, Docket No. 20-1458 (issued March 5, 2021); *L.H.*, Docket No. 17-0947 (issued March 8, 2018).

activity contributed to the development of intervertebral disc disorder with radiculopathy and lumbar sprain sequelae.

The Board finds that the report of Dr. Rogers is sufficient to require further development of the medical evidence in this claim. Dr. Rogers exhibited a comprehensive understanding of appellant's history of injury and provided a rationalized explanation as to how the accepted factors of federal employment resulted in her diagnosed lumbar conditions. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest a causal connection beyond all possible doubt. Rather, the evidence required is only that which is necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>11</sup> Dr. Rogers' medical opinions as set forth in his reports require further development of appellant's claim.<sup>12</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility for the development of the evidence.<sup>13</sup> OWCP has an obligation to see that justice is done.<sup>14</sup>

On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted factors of federal employment either caused or aggravated her diagnosed conditions.<sup>15</sup> If the second opinion physician disagrees with the explanations provided by Dr. Rogers, he or she must provide a fully-rationalized explanation as to why the accepted employment factors were insufficient to have caused or aggravated appellant's diagnosed conditions.

Furthermore, OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.<sup>16</sup> Appellant has a previously accepted claim under OWCP File No. xxxxxx916 for injuries to her cervical and thoracic spine. Therefore, for full and fair adjudication, OWCP must administratively combine the case record in the present claim under OWCP File No. xxxxxx353 with OWCP File No. xxxxxx916 prior to referral to a second opinion physician. This will allow OWCP to consider

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<sup>11</sup> *T.F.*, Docket No. 19-1900 (issued October 27, 2020); *W.M.*, Docket No. 17-144 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011).

<sup>12</sup> *See T.F., id.*; *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>13</sup> *See id.*; *see also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy Hammons*, 51 ECAB 219, 223 (1999).

<sup>14</sup> *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

<sup>16</sup> *S.B.*, *supra* note 10; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

all relevant claim files in adjudicating this claim.<sup>17</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's occupational disease claim.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 4, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> *Id.* at Chapter 2.400.8(c)(1); *W.W.*, Docket No. 19-0884 (issued June 16, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).